

201112-001

ORIGINAL #1280

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AMENDMENT OF LEASE AND OPERATING AGREEMENT -

TIOGA MARINE TERMINAL II, BERTHS 1 AND 2

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FEDERAL MARITIME COMMISSION

THIS AMENDMENT OF LEASE AND OPERATING AGREEMENT

("Amendment") is made as of the 23rd day of April, 2008, by and between the **PHILADELPHIA REGIONAL PORT AUTHORITY ("Landlord")**, a body corporate and politic and an independent agency of the Commonwealth of Pennsylvania, and **KINDER MORGAN LIQUIDS TERMINALS, LLC ("Tenant")**, a Texas Limited Liability Company.

BACKGROUND:

A. Landlord and Tenant's predecessor, GATX Terminals Corporation ("**Original Tenant**"), are parties to that certain Lease and Operating Agreement dated December 1, 2000 (the "**Lease**"), which Lease was filed with the Federal Maritime Commission ("**FMC**") on December 1, 2000 (FMC Terminal Lease Agreement No. 201112), respecting Tenant's lease and occupancy of certain Premises (defined in the Lease) consisting of Berths 1 and 2, Tioga Marine Terminal II, Philadelphia, PA, together with certain improvements thereon and appurtenances thereto.

B. Original Tenant assigned its interests in the Lease to Tenant in March, 2001.

C. Section 2.3 of the Lease provides Tenant with certain options to renew the term of the Lease for three (3) additional five (5) year periods, the first of which was to commence on January 1, 2005 and extending to December 31, 2009 ("the First Renewal Period").

D. Tenant timely exercised its option for the First Renewal Period.

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E. Landlord and Tenant hereby enter into this Amendment to establish the Renewal Period Rent for the First Renewal Period.

NOW, THEREFORE, intending to be legally bound hereby and in exchange for good, valuable and sufficient consideration received, Landlord and Tenant covenant and agree as follows:

1. **Effective Date.** This Amendment shall become effective on the date on which an executed copy hereof is filed with the FMC in accordance with the Shipping Act of 1984.

Landlord shall cause this Amendment to be filed with the FMC promptly following the execution and delivery hereof.

2. **Renewal Period Rent.** Tenant shall pay the Renewal Period Rent (as defined in Section 2.3.2 of the Lease) for the First Renewal Period as follows:

a. **Adjustment for January 1, 2005 – December 31, 2006:** Tenant shall pay to Landlord, within thirty (30) days of the Effective Date of this Amendment, the sum of One Hundred Fifty-One Thousand One Hundred Forty-Six Dollars (\$151,146.00) in full satisfaction of Tenant's remaining Base Rent obligations for 2005 and 2006. Payment shall be due within thirty (30) days of the Effective Date of this Amendment.

b.. **2005 Base Rent:** The parties agree that, for the purposes of calculating Base Rent for the remainder of the First Renewal Period, the Base Rent for 2005 (the "**2005 Base Rent**") is Two Hundred Thirty Thousand Dollars (\$230,000.00).

c. **2007 Base Rent (January 1, 2007 – December 31, 2007):** For the period beginning January 1, 2007 and ending December 31, 2007, the Base Rent shall be Two Hundred Forty-Three Thousand Eighty-Seven Dollars (\$243,087.00) ("**2007 Base Rent**"), calculated by

increasing the 2005 Base Rent of \$230,000.00 by the percentage increase in the CPI (5.69%) from October 2004 (200.2) to October 2006 (211.6), as follows: $\$230,000 + (\$230,000 \times .0569) = \$243,087.00$, payable in twelve (12) equal monthly installments of \$20,257.25. In full satisfaction of Tenant's Base Rent obligations for the months of January and February, 2007, Tenant shall pay the total sum of Twenty-Six Thousand Six Hundred Seventy-Four and 45/100 Dollars (\$26,674.45) to Landlord within thirty (30) days of the Effective Date of this Amendment.

d. **2008 Base Rent (January 1, 2008 – December 31, 2008):** For the period from January 1, 2008 to December 31, 2008, Base Rent shall be Two Hundred Fifty-One Thousand, Four Hundred Ninety-Eight Dollars (\$251,498.00) ("**2008 Base Rent**"), calculated by increasing the 2007 Base Rent of \$243,087 by the percentage increase in the CPI (3.46%) from October 2006 (211.6) to October 2007 (218.929) as follows: $\$243,087 + (\$243,087 \times .0346) = \$251,498$, payable in twelve (12) equal monthly installments of \$20,958.17.

e. **2009 Base Rent (January 1, 2009 – December 31, 2009):** For the period from January 1, 2009 to December 31, 2009, Base Rent shall be that amount ("**2009 Base Rent**") determined by adding (i) the 2008 Base Rent (\$251,498.00), plus (ii) the amount calculated by multiplying the 2008 Base Rent (\$251,498.00) by the percentage increase in the CPI from October 2007 (218.929) to October 2008. 2009 Base Rent shall be payable in twelve (12) equal monthly installments.

3. **Dredging:**

a. Section 6.11.1 of the Lease will be amended by replacing the entire section with the following:

6.11.1. Semi-annually during the Term, Tenant shall undertake soundings of Berth #1 and Berth #2 and shall deliver the results thereof to Landlord, at Tenant's sole expense (the "**Soundings**"). During the Term, Landlord shall, at its sole costs and expense, and at such times as it reasonably determines necessary, based upon the Soundings, conduct maintenance dredging alongside Berth #2 to a depth of 34 feet, plus 2 feet over-dredge, from Mean Low Water Datum; **provided, however**, that Landlord's obligation to undertake such dredging shall be absolutely contingent upon Landlord obtaining all necessary permits and approvals which are prerequisite thereto (which permits and approvals Landlord agrees to pursue in a commercially reasonable manner). Landlord shall conduct maintenance dredging to the depth required in the immediately preceding sentence along side Berth #2 so long as a business need exists for such a depth to be maintained.

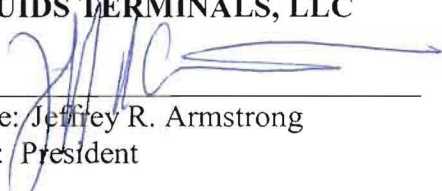
b. **Cost of Dredging.** Provided that Tenant is not in default with respect to its Rent obligations under the Lease as modified by this Amendment, Landlord shall have the sole obligation to pay all costs of its dredging obligations under the Lease, as modified by this Amendment. Landlord shall not seek additional funds from Tenant if the expenses of dredging during the First Renewal Period exceed the amounts anticipated by the parties. Landlord shall not be required to refund any Base Rent to Tenant, nor shall Tenant be entitled to any rent discount or credit, if the expenses of dredging in the First Renewal Period are less than anticipated by the parties.

4. **Dockage at Berth #1.** Section 3.1.3 of the Lease is amended as follows: During the First Renewal Period, Tenant shall pay to Landlord as additional rent a dockage fee equal to:
(a) for barges, Two Hundred Fifty Dollars (\$250.00) per each 24-hour period, or any portion


thereof; and (b) for all other vessels, Three Thousand Dollars (\$3,000) per 24-hour period, or any portion thereof.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

**KINDER MORGAN
LIQUIDS TERMINALS, LLC**

By: 
Name: Jeffrey R. Armstrong
Title: President


**PHILADELPHIA REGIONAL
PORT AUTHORITY**

By: 
Name: James T. McDermott, Jr.
Title: Executive Director

**Approved as to Legality
and Form:**

**Approved as to Propriety and
Availability of Funds:**

**PHILADELPHIA REGIONAL
PORT AUTHORITY**

By: 
Name: Gregory V. Iannarelli, Esq.
Title: Chief Counsel

**PHILADELPHIA REGIONAL
PORT AUTHORITY**

By: 
Name: Edward G. Henderson
Title: Director of Finance & Capital Funding

**OFFICE OF THE ATTORNEY
GENERAL**

By: 
Name: Robert A. Mullen, Esq.
Title: Chief Deputy Attorney General

OFFICE OF THE BUDGET

By: 
Name: Joseph Lawruk
Title: Comptroller